14-593

In The
Supreme Court of the United States

TORREY DALE GRADY,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of North Carolina

PETITION FOR WRIT OF CERTIORARI

Lewis M. ("Luke") Everett
Everett & Everett, Attorneys at Law
2812 Erwin Rd., Suite 205
Durham, NC 27705
T: 919-382-2800
e-mail: luke@everettandeverett.com

Mark L. Hayes
Law Office of Mark L. Hayes
P.O. Box 51387
Durham, N.C. 27717
T: 919-926-7878
email: markhayes@appealnc.com

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTION PRESENTED

Does the State of North Carolina perform an unconstitutional search when it requires a citizen to wear a GPS monitoring ankle bracelet for the rest of his life based only on the citizen's status as a recidivist sex offender and where there is no finding that he is a threat to society?

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Petitioner Torrey Grady respectfully requests that this Court issue a writ of certiorari to review the opinion entered in this case by the Court of Appeals of North Carolina and the refusal to grant a petition for discretionary review by the Supreme Court of North Carolina.

OPINIONS BELOW

The Supreme Court of North Carolina's denial of the petition for discretionary review (Pet.App. 1a) is published at 762 S.E.2d 460 (N.C. 2014). The opinion of the Court of Appeals of North Carolina (Pet.App. 3a) affirming the superior court's Judicial Findings and Order as to Satellite-Based Monitoring When There has Been No Prior Determination is unpublished, but the disposition appears in a table at 759 S.E.2d 712 (2014). The Superior Court's Findings and Order (Pet.App. 8a) appear in the Appendix.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the opinion of the Court of Appeals of North Carolina and the denial of the petition for discretionary review of the Supreme Court of North Carolina pursuant to 28 U.S.C. § 1257(a). The denial of petition for discretionary review was entered on August 19, 2014. This petition for writ of certiorari is timely filed within 90 days from that date. Sup. Ct. R. 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

N.C. Gen. Stat. § 14-208.40

(a) The Division of Adult Correction of the Department of Public Safety shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor three categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant . . . is a recidivist . . . .

. . .

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.
(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

. . .

N.C. Gen. Stat. § 14-208.40B

. . .

(b) If the Division of Adult Correction determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Division of Adult Correction, shall schedule a hearing in superior court for the county in which the offender resides. . . .
(c) . . .
If the court finds that . . . (ii) the offender is a recidivist, . . . the court shall order the offender to enroll in satellite-based monitoring for life.

STATEMENT OF THE CASE

On May 14, 2013, in a twenty-minute determination hearing before a North Carolina superior court judge, Petitioner Torrey Grady was ordered to enter into an involuntary global positioning system (GPS) monitoring program.

The terms of the program are extreme. For twenty-four hours every day, Petitioner must wear an ankle bracelet that transmits all of his movements and locations to agents of the State. He must maintain a GPS monitoring base station in his home, and State personnel can enter his home—with or without his permission—to maintain it. Petitioner must charge his bracelet daily, which requires him to be plugged into a wall outlet at least once a day for four to six hours at a time. These conditions will be imposed upon Petitioner, in perpetuity, for the rest of his life.

At the time that the determination hearing was held, Petitioner was neither in custody nor on probation. Nor was he under suspicion of having committed a crime. Instead, the hearing was held solely on the basis of two prior convictions against Petitioner: a conviction of second degree sexual offense from 1996 when Petitioner was seventeen years old, and a conviction of indecent liberties with a child from 2005.

At the hearing, there was no consideration of whether Petitioner constituted a threat to society; in fact, there were no facts introduced at all other than the fact of Petitioner's previous convictions. On the form order that sentences Petitioner to satellite-based monitoring "for the remainder of [his] natural

life," the sole individualized finding is that "defendant is a recidivist." Pet.App. 9a.

The monitoring order was granted pursuant to N.C. Gen. Stat. § 14-208.40 *et seq.*, a series of statutes that creates a program of GPS monitoring of convicted sex offenders. The law was enacted after both of Petitioner's prior convictions.

Petitioner appealed the monitoring order. The Court of Appeals of North Carolina denied the appeal in an opinion dated May 6, 2014 (Pet.App. 3a).

Petitioner petitioned for discretionary review from the Supreme Court of North Carolina. That petition was denied on August 19, 2014 (Pet.App. 1a).

REASONS FOR GRANTING THE WRIT

In Finding that the Lifetime GPS Monitoring of Petitioner is Not an Unconstitutional Search, the North Carolina Appellate Courts Decided an Important Federal Question in a Way that Conflicts with this Court's Fourth Amendment Jurisprudence.

A. The State's Lifetime GPS Monitoring of Petitioner Is a Search under the Fourth Amendment.

The Fourth Amendment provides in relevant part that, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. By its terms, the Amendment "'indicates with some precision the places and things encompassed by its protections': persons, houses, papers, and effects." *Florida v.*

Jardines, 133 S.Ct. 1409, 1414 (2013) (quoting *Oliver v. United States*, 466 U.S. 170, 176 (1984)). Thus, when the State obtains information by physically trespassing on persons, houses, papers, or effects, "a 'search' within the original meaning of the Fourth Amendment" has "undoubtedly occurred." *United States v. Jones*, 132 S.Ct. 945, 950 n.3 (2012) (holding that the use of a GPS device to track a vehicle's movements constitutes a search under the Fourth Amendment).

The first listed "place [or] thing" protected by the Fourth Amendment is the "person," and this Court's jurisprudence has reflected that primary status. *See, e.g.*, *Schmerber v. California*, 384 U.S. 757, 772 (1966) ("The integrity of an individual's person is a cherished value of our society."). "Virtually any intrusion into the human body" is an invasion that is "subject to constitutional scrutiny." *Maryland v. King*, 133 S.Ct. 1958, 1969 (2014) (internal quotations omitted). Thus, this Court has held each of the following to be searches for Fourth Amendment purposes: a buccal swab taken on the inside of a person's cheek, *id.* at 1968-69; police efforts to draw blood, *Schmerber*, 384 U.S. at 767-72; scrapings taken from underneath an arrestee's fingernails, *Cupp v. Murphy*, 412 U.S. 291, 295 (1973); and a breathalyzer test, *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 616-17 (1989).

By any reckoning, the monitoring in this case is as invasive a trespass as any that this Court has previously considered. Not only has the State attached itself to Petitioner's body for the rest of his life, but it will also enter his home on an ongoing basis to service the instrument of its surveillance. In

so doing, the State makes direct intrusions onto both Petitioner's "person" and his "house." Such intrusions are undoubtedly searches under the *Jones* trespassory test.

However, the Court of Appeals of North Carolina found that the State did not, in fact, engage in a search of Petitioner with its GPS program. Pet.App. 3a-7a. In response to this Court's recent ruling in *Jones*, the court of appeals found only that Petitioner's case was "readily distinguishable" from *Jones* because the North Carolina program is civil in nature while *Jones* was a criminal case. Pet.App. 7a (relying on *State v. Jones*, 750 S.E.2d 883, 886 (N.C. App. 2013), which held that *U.S. v. Jones* was inapplicable to civil GPS monitoring because it dealt with a criminal search).

The court of appeals provides no authority for the proposition that the State's program might not constitute a search merely because the State has dubbed it a "civil" program. *See* Pet.App. 3a-7a. Nor could it, as this Court has explicitly refused to adopt such an interpretation of the Fourth Amendment. *See New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985) ("[W]e have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities."). Absent this distinction, it is unimaginable that the State's program is not a search.

B. The State's Lifetime GPS Monitoring of Petitioner is Not Reasonable.

When the State performs a search, the Fourth Amendment requires that search to be reasonable. *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646,

652 (1995) ("[T]he ultimate measure of the constitutionality of a governmental search is 'reasonableness.'"). "Reasonableness" usually requires a warrant supported by probable cause, but this Court has carved out "a few specifically established and well-delineated exceptions" to that requirement. *Katz v. United States*, 389 U.S. 347, 357 (1967). The question of whether a warrantless search is reasonable is determined "by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Delaware v. Prouse*, 440 U.S. 648, 654 (1979).

While an individual's status may affect this balancing, the Fourth Amendment never "falls out of the picture entirely." *Riley v. California*, 134 S.Ct. 2473, 2488 (2014) (holding that "when privacy-related concerns are weighty enough, a search may require a warrant," even when the individual has diminished expectations of privacy (internal quotations omitted)). Thus, regardless of an individual's status, a search is still unconstitutional if the imposition on the individual significantly outweighs the governmental interest. *See id.* at 2488-95 (finding the search of an arrestee's cell phone records to be unreasonable despite the fact that the arrestee may have reduced privacy expectations).

Every search must also be "carefully circumscribed so as to prevent unauthorized invasions of 'the sanctity of a man's home and the privacies of life.'" *Berger v. New York*, 388 U.S. 41, 58 (1967) (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). Even a search supported by probable cause is unreasonable if it is "too broad in

its sweep." *Berger*, 388 U.S. at 44. In *Berger*, the Court found a New York statute authorizing eavesdropping to be unconstitutional because (a) the statute failed to describe with particularity the conversations sought; (b) the two-month, 24 hour a day duration of the search was too "long and continuous"; (c) the statute did not set a termination date on the eavesdrop but left that determination to the discretion of police; and (d) the statute's procedure did not require a showing of exigent circumstances. *Id.* at 58-60. The Court issued this ruling despite Government testimony that outlawing these searches would "severely cripple crime detection." *Id.* at 60-62 ("[W]e cannot forgive the requirements of the Fourth Amendment in the name of law enforcement.").

Ultimately, then, a search that is exceedingly broad and intrusive is unconstitutional, even when the subject has reduced privacy expectations and the state has a legitimate governmental interest. *See Riley*, 134 S.Ct. at 2482-95. In *Riley*, the Court considered whether an officer's search of an arrestee's cell phone was a reasonable search incident to arrest. *Id.* The Government argued, *inter alia*, that the search was reasonable because it furthered the Government's legitimate interest of "ensur[ing] officer safety . . . by alerting officers that confederates of the arrestee are headed to the scene." *Id.* at 2485. The Court agreed that there was "undoubtedly a strong government interest in warning officers about such possibilities." *Id.* However, the Government provided "[no] evidence to suggest" that searching cell phones would further that interest of protecting officers. *Id.*

On the other side of the balancing, the Court in *Riley* recognized the privacy concerns implicated by modern cell phones. *Id.* at 2488-91. In the course of a lengthy discussion of the significant role that cell phones now play in the life of the average American, *id.*, the Court wrote that "many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate." *Id.* at 2490.

The Court thus balanced the Government's claim that the warrantless search of an arrestee's cell phone furthered a legitimate governmental interest against the significant privacy invasion of such a search. *Id.* at 2495. As in *Berger*, the Court acknowledged that its decision could "have an impact on the ability of law enforcement to combat crime," *id.* at 2493, but nevertheless found the search to be unconstitutional, *id.* at 2495.

In this case, because the State maintained that its GPS monitoring program does not constitute a search—and because the North Carolina appellate courts accepted that contention—the State has not articulated a position on the reasonableness of its program. If pressed, however, the State would almost certainly respond that the "legitimate governmental interest" of protecting its citizens renders the search reasonable. Such protection is named as the purpose of the article in which the statute falls: "[I]t is the purpose of this Article to assist law enforcement agencies' efforts to protect communities . . . ." N.C. Gen. Stat. § 14-208.5 (2013).

Petitioner does not deny that protecting citizens is a "legitimate governmental interest." He also concedes that his status may alter the calculus

of the balancing test as applied to him. However, as his Fourth Amendment rights have not "fall[en] out of the picture entirely," a balancing must still be done between the search's intrusion onto his individual rights and the State's interests. The State and its courts have refused to do so.

Such a balancing is lopsided. While this Court gave great weight to the personal nature of cell phones in *Riley*, the information found by the GPS search here is even more personal, as it includes every move made by Petitioner for the rest of his life. Such information goes to the heart of Petitioner's "privacies of life." Add to that the invasion of the State entering Petitioner's home uninvited, and it is hard to imagine a more intrusive search than that experienced by Petitioner.

The searches are especially intrusive given that Petitioner has fully completed the sentences for his previous crimes. The State does not have an "ongoing supervisory relationship" as it does with a probationer. *See Griffin vs. Wisconsin*, 483 U.S. 868, 879-80 (1987) (finding home searches of probationers constitutional). Nor did he accept these searches as a condition of his release. *See Samson v. California,* 547 U.S. 843, 846 (2006) (finding the search of a parolee who has consented to such a search as a term of his release to be constitutional).

Moreover, the program is in no way "carefully circumscribed." As in *Berger*, the State's GPS monitoring statute fails to specify what sort of information is to be sought, and it requires no exigent circumstances before permitting the State to acquire information about Petitioner. And the GPS monitoring of Petitioner doesn't stop after the two

months that the *Berger* Court found to be "long and continuous"; it continues for the rest of his life.

On the other side of the balancing, little evidence supports the State's contention that GPS monitoring of sex offenders furthers its legitimate governmental interest of protecting the public. When, in 2010, the Supreme Court of North Carolina considered whether the State's GPS monitoring program constituted an ex post facto punishment, the State could provide "no evidence or testimony . . . that the [satellite-based monitoring] program . . . operates to prevent actual harm to our state's children." *See State v. Bowditch*, 364 N.C. 334, 356 (Hudson, J, dissenting). Instead, because enrollees were not subject to any exclusion zones, "no one knows when one of these offenders is actually in a school, or near a child care center, or talking to a neighborhood child, or even has a child in his home, before any harm might befall that child." *Id.*

A recent comprehensive study of sex offender monitoring in California—the first state to enact such statutes and the state that has the most extensive GPS monitoring program—found very little evidence that GPS monitoring prevents crime. *See* Robert A. Barton, et al., *Assessment of Electronic Monitoring of Sex Offenders on Parole and the Impact of Residency Restrictions* at 6 (October 2014), available at: http://www.oig.ca.gov/media/reports/Reports/Reviews/OIG_Special_Review_Electronic_Monitoring_of_Sex_Offenders_on_Parole_and_Impact_of_Residency_Restrictions_November_2014.pdf ("The OIG is unaware of any large-scale studies on the effectiveness of GPS as a crime deterrent."). Indeed, the study calls into question "the popular belief that sex offenders have

a high rate of recidivism compared to other types of felons," which is "an underlying premise" to GPS monitoring itself. *Id.* at 18. The study relied on a 2003 U.S. Department of Justice survey of over 9,000 male sex offenders which found that "[c]ompared to non-sex offenders released from state prison, sex offenders had a lower overall re-arrest rate for *any type* of crime (not just sex crimes)." *Id.* (internal quotations omitted; emphasis and parenthetical information in original).

As this Court held in *Riley* and *Berger*, any search must actually further the legitimate governmental interest claimed. Here, as in *Riley*, where the Government could provide no evidence that the warrantless search of cell phones furthered a governmental interest, there is no evidence that the GPS monitoring actually protects citizens. Weighed against the exceptionally invasive nature of lifetime GPS monitoring, that lack of evidence renders the State's search of Petitioner unreasonable and, consequently, unconstitutional.

C. North Carolina's GPS Monitoring Program Raises an Important Federal Question.

As of September 30, 2014, 602 individuals were subject to GPS monitoring in North Carolina. Given that number and the severity of the Fourth Amendment intrusions by the State, the issue presented in this case would merit serious concern even if North Carolina were alone in instituting a program of this sort.

But North Carolina is far from alone. Since 2005, over forty states have enacted laws mandating some form of GPS monitoring for certain convicted

sex offenders. *See* Eric Dante, *Tracking the Constitution—the Proliferation and Legality of Sex-Offender GPS-Tracking Statutes*, 42 Seton Hall L. Rev. 1169, 1172-92 (detailing the proliferation of GPS monitoring in states across the country). Of those states, eight—including North Carolina—create a system of lifetime monitoring. *Id.* at 1179. In California alone, 9,300 sex offenders are currently being monitored. *See* "Sex Offender Information Overview," *California Department of Corrections and Rehabilitation webpage*, available at http://www.cdcr.ca.gov/parole/sex_offender_facts/index.html.

Moreover, the use of GPS monitoring is expanding to cover populations besides sex offenders. California, for instance, has been monitoring gang members by GPS for nearly a decade. *See* Stephen Gies, et al., *Monitoring High-Risk Gang Offenders with GPS Technology: An Evaluation of the California Supervision Program Final Report* (Sept. 30, 2013), available at: https://www.ncjrs.gov/pdffiles1/nij/grants/244164.pdf. And at least thirteen states have created GPS monitoring programs for domestic abusers. *See* Ariana Green, *More States Use GPS to Track Abusers*, N.Y. Times, May 8, 2009, at A10.

Legislators or even state judiciaries are unlikely to stand in the way of public pressure to implement GPS monitoring. When the North Carolina legislature first created the GPS monitoring system in 2006, the vote by the state House of Representatives was 108 to zero. N.C. H.R. Vote Tran., 2006 Reg. Sess. H.B. 1896. The Governor signed the bill into law, saying in an executive message, "This legislation ensures that North

Carolina has among the toughest laws in the country . . . ." N.C. Gov.'s Mess. (Aug. 16, 2006). And when, in 2010, Justice Robin Hudson of the Supreme Court of North Carolina wrote in a dissent that North Carolina's GPS monitoring program constituted an ex post facto punishment, she became the subject of a television ad campaign accusing her of "siding with child molesters." *See* Scott Mooneyham, *A Political Ad Too Far*, Asheville Citizen-Times, April 29, 2014.

As GPS surveillance technology advances, the public will continue to demand its use in more—and more intrusive—searches. This Court must make certain that such searches comport with the requirements of the Fourth Amendment.

CONCLUSION

For the foregoing reasons, Petitioner requests the Court to grant his petition for a writ of certiorari.

Respectfully submitted.

Lewis M. ("Luke") Everett
Luke Everett
Everett & Everett, Attorneys at Law
2812 Erwin Rd., Suite 205
Durham, NC 27705
T: 919-382-2800
e-mail: luke@everettandeverett.com

Mark L. Hayes
Law Office of Mark L. Hayes
P.O. Box 51387
Durham, N.C. 27717
T: 919-926-7878
email: markhayes@appealnc.com

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APPENDIX

Lewis M. ("Luke") Everett
Everett & Everett, Attorneys at Law
2812 Erwin Rd., Suite 205
Durham, NC 27705
T: 919-382-2800
e-mail: luke@everettandeverett.com

Mark L. Hayes
Law Office of Mark L. Hayes
P.O. Box 51387
Durham, N.C. 27717
T: 919-926-7878
email: markhayes@appealnc.com

Counsel for Petitioner

762 S.E.2d 460 (Mem)
Supreme Court of North Carolina.
STATE of North Carolina
v.
Torrey Dale GRADY.
No. 179P14.
Aug. 19, 2014.

Attorneys and Law Firms

Mark L. Hayes, for Grady, Torrey Dale.
Joseph Finarelli, Special Deputy Attorney General, for State of North Carolina.
Ben David, District Attorney, for State of North Carolina.

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendant on the 5th of June 2014 in this matter pursuant to G.S. 7A–30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the State of NC, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is "Allowed by order of the Court in conference, this the 19th of August 2014."

Upon consideration of the petition filed on the 5th of June 2014 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A–31,

the following order was entered and is hereby certified to the North Carolina Court of Appeals: "Denied by order of the Court in conference, this the 19th of August 2014."

NO. COA13-958
NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2014

STATE OF NORTH CAROLINA

v. New Hanover County
No. 06 CRS 52283
TORREY GRADY, Defendant.

Appeal by defendant from order entered 14 May 2013 by Judge Reuben F. Young in New Hanover County Superior Court. Heard in the Court of Appeals 17 March 2014.

Roy Cooper, Attorney General, by Joseph Finarelli, Special Deputy Attorney General, for the State.

Mark L. Hayes, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Torrey Grady appeals from the trial court's order requiring him to enroll in a satellite-based monitoring ("SBM") program for the duration of his natural life. We affirm.

On 13 September 2006, defendant was convicted upon a guilty plea of taking indecent liberties with a child in violation of N.C.G.S. § 14-202.1. On 15 March 2010, defendant acknowledged receipt of a letter from the North Carolina Department of Correction notifying him to appear at an SBM determination hearing. The letter informed defendant that the Department made an initial

determination that he met the criteria of a recidivist based on a prior 1997 conviction in New Hanover County of second-degree sexual offense, and notified him to appear at the SBM determination hearing so that the trial court in his county of residence could make a determination as to whether defendant "shall be required to enroll in [SBM]."

The trial court conducted defendant's SBM determination hearing on 14 May 2013 in accordance with N.C.G.S. § 14-208.408, during which it also considered defendant's "Motion to Deny [SBM] Application and Dismiss Proceeding," filed almost one week earlier. In the motion and at the hearing, defendant's counsel argued that SBM violated defendant's constitutional right to be free from unreasonable searches and seizures. The trial court denied defendant's motion to dismiss the SBM determination proceeding, determined that defendant qualified as a recidivist, and ordered defendant to enroll in SBM for the remainder of his natural life. Defendant filed timely written notice of appeal.

Defendant contends the trial court erred by denying his motion to dismiss the SBM determination proceeding. Defendant argues that "the constant GPS monitoring (and the imposition of the GPS equipment for that purpose)" used in SBM violates his constitutional protections against unreasonable searches and seizures. We must disagree.

In support of his argument, defendant relies on the United States Supreme Court's decision in United States v. Jones, 565 U.S. ____,181 L. Ed. 2d 911 (2012), which held that "the Government's [warrantless] installation of a GPS device on a

target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'" Id. at 181 L. Ed. 2d at 918 (footnote omitted). Defendant draws our attention to the Court's application of the plain text of the Fourth Amendment of the U.S. Constitution, which expressly "provides in relevant part that [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," id. at 181 L. Ed. 2d at 917 (alteration in original) (internal quotation marks omitted), and emphasizes the Court's rejection of the applicability of the reasonable-expectation-of-privacy test articulated in Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576 (1967), to the issue before it. United States v. Jones, 565 U.S. at ____ , 181 L. Ed. 2d at 918-23.

However, in State v. Jones, ___ N.C. App.___, 750 S.E.2d 883 (2013), this Court considered the precise issue on appeal presented by defendant in the present case. See id. at 750 S.E.2d at 885-86. The State v. Jones defendant argued, as this defendant argues now, that SBM required him to be "subject to an ongoing search of his person," that such a "physical intrusion onto a person's body [wa]s far more serious than the placement of a transmitter on a car"-as was the case in United States v. Jones-and that SBM caused the State v. Jones defendant to be "subject to random searches for his location at any time, without any particularized showing of why that search need[ed] to be conducted." He further argued, as this defendant argues now, that this Court should rely on the same analysis as that articulated in United States v. Jones, one "[c]onsistent with th[e] understanding" that "[t]he

text of the Fourth Amendment reflects its close connection to property" and recognizes that "Fourth Amendment jurisprudence v1as tied to common-law trespass, at least until the latter half of the 20th century." See United States v. Jones, 565 U.S. at 181 L. Ed. 2d at 918. Nevertheless, in State v. Jones, this Court rejected defendant's argument and concluded that United States v. Jones did not control, and that our decision in State v. Martin, N.C. App. 7 35 S .E.2d 23 8 (2012),[1] required us to overrule the defendant's argument on appeal. See State v. Jones, N.C. App. at, 750 S.E.2d at 885-86.

Defendant argues that this Court erroneously relied on Martin in State v. Jones because Martin did not address the same violative intrusion challenged by the defendant in State v. Jones, and because Martin "only held that no Fourth Amendment violation had occurred as contemplated by the Katz test, while [this defendant] has contended in the case at bar that a violation has occurred pursuant to the trespassory test enunciated in [United States] v. Jones." Despite defendant's

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[1] In Martin, this Court rejected a defendant's challenge to SBM as violative of his Fourth Amendment rights based on his assertion that SBM "would require [him] to allow DOC officials to make routine warrantless entries into his home," Martin, N.C. App. at 735 S.E.2d at 238 (alteration and omission in original) (internal quotation marks omitted), and that SBM "place[d] him in a position where he [wa]s forced to choose between forever waiving his Fourth Amendment rights or face criminal prosecution for failing to cooperation [sic] with the DOC." Id. at 735 S.E.2d at 238 (internal quotation marks omitted).

protestations to the contrary, in State v. Jones, this Court considered and rejected the argument that "if affixing a GPS to an individual's vehicle constitutes a search of the individual, then the arguably more intrusive act of affixing an ankle bracelet to an individual must constitute a search of the individual as well." State v. Jones, N.C. App. at 750 S.E.2d at 886. This Court determined that United States v. Jones was "readily distinguishable" and "d[id] not control" in that case. Id. Thus, we must conclude that, in State v. Jones, this Court "decided the same issue" that defendant presents for review in the present appeal. See In re Civil Penalty, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). We, as "a subsequent panel of the same court [are] bound by that precedent, unless it has been overturned by a higher court." See id. Because State v. Jones was filed after United States v. Jones, we continue to be bound by State v. Jones. See State v. Jones, 358 N.C. 473, 487, 598 S.E . 2d 125, 134 (2004) ("While a panel of the Court of Appeals may disagree with, or even find error in, an opinion by a prior panel and may duly note its disagreement or point out that error in its opinion, the panel is bound by that prior decision until it is overturned by a higher court."). Accordingly, we conclude that the trial court did not err when it denied defendant's motion to dismiss the SBM determination proceeding and we overrule this issue on appeal.

Our disposition on this issue renders it unnecessary to address defendant's additional arguments with respect to this issue on appeal and we decline to do so.

Affirmed.

Judges McGEE and CALABRIA concur. Report per Rule 30(e).

STATE OF NORTH CAROLINA

New Hanover County

File No. 06 CRS 52283

In the Superior Court Division

State v. Torrey Grady

JUDICIAL FINDINGS AND ORDER AS TO SATELLITE-BASED MONITORING WHEN THERE HAS BEEN NO PRIOR DETERMINATION

Offense 1: 06 CRS 11573, 2d Sexual Offense, date of offense 01/27/05, G.S. No. 14-27-6

Offense 2: 06 CRS 52283, Taking Indecent Liberties with Children, date of offense 01/01/05, G.S. No. 14-202.1

Findings:

1. The defendant was convicted of a reportable conviction as defined by G.S. 14-208.6(4), but the sentencing court made no determination on whether the defendant should be required to enroll in satellite-based monitoring under Article 27A of Chapter 14 of the General Statutes.

2. The Division of Adult Correction has made an initial determination that the offender falls into at least one of the categories requiring satellite-based monitoring under G.S. 14-208-40, and gave notice to the offender of the applicable category(ies).

3. The District Attorney scheduled a hearing in the county named above, which is the county of the defendant's residence, the Division provided notice to the defendant as required by G.S. 14-208.40B, and the hearing was not held sooner than 15 days after the date the Division gave notice.

4. The defendant is a recidivist.

ORDER

Based on the foregoing findings, the Court ORDERS that:

The defendant shall enroll in satellite-based monitoring under Article 27A of Chapter 14 of the General Statutes for the remainder of the defendant's natural life.

Date: 5/14/13

Signed: Judge Reuben F. Young